*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION Nos.14025 and 23731 of 2005

%18-03-2006

T.Rameshwal, S/o.Late T.Sathaiah

...Petitioner

Vs.

$ The Commissioner, Municipal Corporation of Hyderabad

and others

...Respondents

! COUNSEL FOR PETITIONER: Sri T.P.Acharya

^ COUNSEL FOR RESPONDENT No.1: Sri Ghanta Rama Rao, learned Standing Counsel for MCH

COUNSEL FOR RESPONDENT NO.2: Government Pleader for Municipal Administration

COUNSEL FOR RESPONDENT Nos.3 to 6: Sri V.Kiran Rao

COUNSEL FOR RESPONDENT No.7: Sri M.Ravindranath Reddy

COUNSEL FOR RESPONDENT No.8: Sri P.V.Sanjay Kumar

<GIST

>HEAD NOTE:

?CASES REFERRED:

1. 1985(1) APLJ 20 (DB)
2. 2001(3) ALT 200

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.14025 and 23731 OF 2005

18.03.2006

Between:

T.Rameshwal, S/o.Late T. Sathaiah

… Petitioner

AND

The Commissioner, Municipal Corporation of Hyderabad

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.14025 and 23731 OF 2005

COMMON ORDER:

The dispute in these two writ petitions is in relation to a piece of land admeasuring 1022 Sq.yards bearing MCH No.2-2-63/1 in survey No.119 situated at Bagh Amberpet, Hyderabad (hereafter called, the subject property). There is no dispute however that the father of T.Rameshwar and the husband of the lessor of S.Jagadeeshwar Rao (fourth and third respondents in W.P.No.23731 of 2005) were

joint owners of the total extent of land admeasuring 2200 sq. yards. After death of her husband, Namuri Lakshmamma, W/o.Anjaiah Goud along with her sons claimed to have succeeded to the property. She executed a lease deed in respect of the subject property in favour of third respondent, who obtained a dealership from the Indian Oil Corporation Limited (IOCL, the petitioner in W.P.No.23731 of 2005), who in turn executed another document in favour of the petitioner sub-leasing the premises for setting up petroleum outlet. So as to set up/ construct such outlet, the petitioner on its own submitted an application to the Municipal Corporation of Hyderabad (MCH) under Sections 428 and 433 of Hyderabad Municipal Corporations Act, 1955 (HMC Act, for short) on 10.2.2005. In the meanwhile, the fourth respondent filed a writ petition being W.P.No.14025 of 2005 before this Court seeking a writ of Mandamus directing the MCH and District Collector, Hyderabad not to accord any permission including the permission to make constructions on the subject property. In W.P.No.23731 of 2005, the fourth respondent allege that he filed a suit being O.S.No.4185 of 2004 on the file of the Court of the VII Senior Civil Judge, City Civil Court, Hyderabad for cancellation of the lease deed executed by Lakshmamma in favour of third respondent and, therefore, pending such suit if any permission is granted he would suffer legal wrong. This Court while admitting W.P.No.14025 of 2005 on 18.7.2005 observed that any construction made by the IOCL, would be subject to result of the writ petition. On 19.7.2005 (a day after this Court admitted W.P.No.14025 of 2005), MCH through its Chief City Planner addressed a communication dated 19.7.2005 to the petitioner informing that the application submitted by them cannot be considered as there is a title dispute among the legal heirs in respect of the subject property. Feeling aggrieved by the same, IOCL filed W.P.No.23731 of 2005. Thus for and hereafter the description/reference to the parties is in accordance with their status as they are arrayed in W.P.No.23731 of 2005.

The petitioner besides averring the background as above, further states that the fourth respondent filed I.A.No.1711 of 2004 in O.S. No.4185 of 2004 for *ad interim* injunction restraining IOCL from changing the nature of the property by making constructions. The said I.A., was dismissed by the trial Court on 17.1.2005, that thereafter the petitioner filed W.P.No.14025 of 2005 for a direction to the MCH not to accord any permission for construction of petroleum outlet, that this Court only observed that any construction made by the petitioner would be subject to result of the writ petition and, therefore, it was wrong for MCH to reject the building permission on the ground that there is a title dispute. Secondly, it is contended that even according to the fourth respondent, Lakshmamma and her son are entitled to half share in the entire extent of 2200 sq.yards and, therefore, the lease executed by them in favour of the third respondent is not rendered illegal or unenforceable. Thirdly, it is the contention of the petitioner that when it has submitted all the documents along with the application under Section 428 of HMC Act, the building application was not considered on a complaint petition submitted by the fourth respondent without giving any notice to the petitioner or third respondent and, therefore, the same is unsustainable.

The fourth respondent has filed a counter affidavit *inter alia* stating that the Court of

the VII Senior Civil Judge dismissed I.A.No.1711 of 2004 based on a misrepresentation made by the petitioner and the third respondent to the effect that it has already obtained necessary permissions and established outlet. Therefore, the fourth respondent alleges that the pendency of the civil suit itself bars the consideration of the application filed by the petitioner for grant of building permission. The fourth respondent, however, does not deny that the petitioner obtained necessary permission from the Commissioner of Police and other authorities.

Learned Counsel for the petitioner and learned Counsel for the third respondent, who are sailing together, submit that on a mere allegation that there is a title dispute to the property where the construction is proposed, the MCH cannot refuse to consider the grant of permission. Strong reliance is placed on a Division Bench judgment of this Court in **Subash Kumar Lohade v MCH** and the judgment of the single Judge of this Court in **Hyderabad Potteries Pvt. Ltd. v Collector, Hyderabad District**. Secondly, they would urge that the petitioner has submitted application duly enclosing all the necessary documents and also submitted revised plan on 16.4.2005. At that stage, the fourth respondent submitted a complaint and the same was taken into consideration while rejecting permission without giving any notice to the petitioner or the second respondent. According to the learned Counsel, the rejection of the petitioner's application without notice is unsustainable.

As noticed supra, the fourth respondent in W.P.No.23731 of 2005 is the petitioner in W.P.No.14025 of 2005. In both the matters, he is represented by Sri T.P.Acharya, learned Counsel. He submits that when there is a title dispute, the Commissioner, MCH, cannot issue any building permission and that the dismissal of the I.A. filed by the fourth respondent does not in any manner alter the situation.

Section 428 of HMC Act requires every person intending to erect building to give notice to the Commissioner specifying the position of the building, the description and the purpose for which it is intended, the dimensions and the name of the person whom he intends to employ to supervise the erection. Section 429 of HMC Act enumerates the documents, which are to be furnished to the Commissioner. Under Section 429(1)(aa) of HMC Act, a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with an urban land ceiling clearance certificate or as the case may be an affidavit referred to in Section 388 has to be compulsorily enclosed. Section 438 of HMC Act requires the Commissioner to record reasons for disapproving any building or work of which notice has been given under Section 428 of HMC Act. Section 439 of HMC Act empowers the Commissioner to withhold disposal of plans in certain circumstances. While considering the grant of building permission or rejecting building permission, the Commissioner is also required to adhere to the Municipal Corporation Building Byelaws, 1981 (Building Byelaws, for short). Byelaw 4.2(v) of Building Byelaws requires every application for building permit to be accompanied by attested copy of the original sale deed/lease deed and attested copy of Revenue Survey Sheet/Municipal Survey Sheet, and affidavit acceptable to the Commissioner, MCH in proof of ownership. Byelaw 6.2 of Building Byelaws requires clearance of sites adjoining Government property and such clearance has to be produced either from

the Government, military authority or statutory authority as the case may be.

A cursory reference to some of the provisions of the HMC Act, Building Byelaws, as above, would show that there is no specific provision, which enables the Commissioner of MCH to reject an application for building permission on the ground that the ownership of the person applying for permission is doubtful. However, the Division Bench of this Court in **Subash Kumar Lohade** (supra), after referring to various provisions of the HMC Act and A.P.Urban Areas (Development) Act, 1975, held that while scrutinizing the application for building permission, it is always open for the Corporation to look into the matter and determine whether the applicant is owner or not. The relevant observations are as follows.

> The Corporation shall also have the power, in such a situation, to call upon the Collector to submit his specific objections, if any, and any other documents which the Collector may wish to produce in support of his objection. It is, however, for the Corporation, or the appropriate authority of the Corporation, as the case may be (authority competent to sanction the layout under the Layout Rules and the Zoning Regulations), to look into the matter and determine whether the applicant is the owner of the land, or not. Any finding or conclusion arrived at by the authority in this behalf shall, of course, be subject to the decision of a Court. It is reiterated that the determination of the authority on the above aspect shall be valid only for the purpose of the sanction of layout and nothing more.

I n **Hyderabad Potteries Pvt. Ltd.** (supra), this Court was dealing with a case wherein the Commissioner of MCH refused to grant building permission on the ground that the land in question therein is a government land. Such conclusion was arrived at based on the entries made in Town Survey Lands Register (TSLR). Disapproving the action of the MCH, this Court while observing that the Commissioner shall not reject the application for grant of the permission solely on the basis of entries in TSLR, held as under.

> Of course, the Commissioner has to consider the objections, if any, raised for grant of permission. But, an objection raised by a member of the Committee itself would not be enough to reject the application for grant of permission. The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of *prima facie* title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector(s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to do is to find out *prima facie* title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more.

In an unreported judgment of this Court in **V.Jaya Prakash v The Commissioner of Municipality, Kapra Municipality** (W.P.No.3979 of 2003 dated 24.11.2003), I have considered the question as to whether it is competent for the Commissioner of a Municipality to reject building permission on the ground that there is a title dispute with regard to the site on which a building is proposed to be considered. Having regard to Section 215 of the A.P. Municipalities Act, 1965 (the Act, for short), I have held as under.

> The Municipalities Act is an Act *inter alia* providing for disciplined and planned growth of the municipal area. The power vested in various authorities should be exercised for public good. By exercising power in a manner which would result in dispute, cannot be appreciated. The common law principle of absolute individual right is replaced by the principle of community welfare. Therefore, while passing orders under Section 213 read with Section 215, it is always open to the Commissioner to postpone the decision if there is a dispute between two rival claimants to the property in question. Indeed, when the dispute is *sub judice*, it shall be the duty of the Commissioner to postpone the permission, for the public authority must respect the Court's decision and implement it and/or aid in implementing the same. In this context, a reference may be made to Article 144 of the Constitution of India which is to the effect that all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court.

Therefore, the law as interpreted by this Court with reference to HMC Act and the Act, which requires the Commissioner to consider the objections, as and when they are raised, for grant of permission on the ground of title in a pragmatic manner taking into consideration only *prima facie* factors. While doing so, the Commissioner cannot assume the role of an adjudicator or arbitrator and decide the title *inter se* between the applicant for building permission and the objector of such building permission. If the applicant is able to show that *prima facie* such applicant has a right to proceed with the construction notwithstanding the pendency of any litigation by way of a suit or other proceeding subject to the applicant applying the certain conditions, the Commissioner may either grant permission or postpone the grant of permission.

A reading of the impugned letter dated 19.7.2005 would show that the same came to be issued by the Chief City Planner, MCH, after considering the complaint petition filed by the fourth respondent, without giving any notice to IOCL or its dealer, the third respondent. This would certainly cause prejudice to the petitioner. Therefore, this Court is of considered opinion that the matter should be considered afresh by the first respondent keeping in view the background of the case to which a brief reference is made in this judgment. Needless to mention that while doing so, the Commissioner of MCH shall issue notice to the petitioner, the third respondent and fourth respondent, and pass appropriate orders keeping in view the decisions of this Court referred to herein above. This exercise may be completed within a period of two weeks from the date of receipt of a copy of this order.

The W.P.No.23731 of 2005, with the above observations and directions, is disposed of. In view of the orders passed in W.P.No.23731 of 2005, no further orders are

necessary in W.P.No.14025 of 2005 and the same is accordingly disposed of. There shall be no order as to costs.

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(**V.V.S.RAO,J**)

March 18, 2006.

NOTE:

L.R. Copy be marked.

(By order)

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